

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD.**

DIST. BEED.

ORIGINAL APPLICATION Nos.892,893 & 894 of 2011.

(1) ORIGINAL APPLICATION Nos.892/2011.

Baburao S/o Viltharao Sanap
Age 56 years, Occu. Service,
R/o Z.P. High School, Khokar Moha,
Tq. Shirur, Dist. Beed.

-- APPLICANT.

V E R S U S

1. State of Maharashtra through its
Through Secretary to the Government
of Maharashtra of School Education
and Sports Department
(Copy to be served on CPO, Maharashtra
Administrative Tribunal, Bench at
Aurangabad).
2. The Director of Education
Secondary and Higher Secondary
Maharashtra State, Pune -1.
3. The Chief Executive Officer,
Zilla Parishad, Beed,
Dist. Beed.

-- RESPONDENTS.

(2) ORIGINAL APPLICATION Nos.893/2011.

Ramrao S/o Dadarao Misal,
Age years, Occu. Service,
R/o Z.P. High School, Sautada,
Tq. Patoda, Dist. Beed.

-- APPLICANT.

V E R S U S

1. State of Maharashtra through its
Through Secretary to the Government
of Maharashtra of School Education
and Sports Department
(Copy to be served on CPO, Maharashtra
Administrative Tribunal, Bench at
Aurangabad).
2. The Director of Education
Secondary and Higher Secondary
Maharashtra State, Pune -1.
3. The Chief Executive Officer,
Zilla Parishad, Beed,
Dist. Beed.

-- RESPONDENTS.

(3) ORIGINAL APPLICATION Nos.894/2011.

1. Balasaheb S/o Baburao Munde,
Age 49 years, Occu. Service,
R/o "Muktai", Vivekanand Nagar,
Parli Road, Ambejogai, Taluka
Ambejogai, District Beed.

2. Mahadeo S/o Narayan Gholve,
Age 47 years, Occu. Service,
R/o "Shram-Safalya", Niwas,
Swarajya Nagar, Barshi Road,
Beed, District Beed.

-- APPLICANTS.

V E R S U S

1. State of Maharashtra,
(Copy to be served on Chief
Presenting Officer, M.A.T.
Aurangabad).
2. The Director of Education
(General Education),
Maharashtra State, Pune.
3. The Deputy Director of
Education, Aurangabad Region,
Aurangabad.
4. The Deputy Director of Sports,
Aurangabad Region, Aurangabad.
5. The Chief Executive Officer,
Zilla Parishad, Beed.

-- RESPONDENTS.

APPEARANCE : Shri AS Deshmukh learned Advocate
for the Applicants in OA Nos.892 &
893 of 2011 and Smt. Supriya R.
Bhilegaonkar holding for Shri M.S.
Deshpande, learned Advocate for the
Applicant in OA No.894/2011.

4 OA Nos.892,893 & 894 of 2011.

: Shri S.K. Shirse, Learned Presenting Officer for Respondents No.1 & 2 in OA Nos.892 & 893 of 2011 and

Smt Deepali S. Deshpande, learned P.O. for the Respondents no.1 to 4 in OA No.894 of 2011.

: Shri N.L.Jadhav, learned Advocate for Respondent no.3 in OA Nos.892 & 893 and on behalf of Respondent no.5 in OA No.894 of 2011 (Absent).

CORAM : **Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)**
&
: **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 20.10.2016.

COMMON JUDGMENT
(Delivered on 20/10/2016.)

(Per: Hon'ble Shri J.D. Kulkarni, Member (J))

1. All these Original Applications are disposed of by this common judgment.

2. In O.A. No. 892/2011 the Applicant Baburao Vilthalrao Sanap is serving as a Head Master in Zilla Parishad School at Khokar Moha, Tq. Shirur Dist. Beed. He has acquired his degree in B.A. (English) and he has also completed B.P.Ed. He was initially appointed as Assistant Teacher (District Technical Services, Class III (Education))

in Secondary School and he was posted at Dighol Amba Tq. Kaij Dist. Beed. However, his date of appointment is shown as 15.12.1983 in the seniority list. He was given temporary charge of the post of Block Head Master, Class II, which is a post of Gazetted Officer, Class II and he worked there from 1.7.2006 to 5.12.2009.

3. In OA No.893/2011 the Applicant Ramrao Dadarao Misal was appointed as Assistant Teacher, District Technical Services Class III (Education) in the Secondary School and was posted at Bramhanath Yelamb, Dist. Beed on 11.10.1980. However, his date of appointment is shown as 14.10.1982 in the seniority list. He was in charge of the post of Block Educational Officer at Shirur (Kasar) for the period 31.3.2010 to 2.7.2010.

4. In OA No.894/2011 applicants namely - Balasaheb S/o Baburao Munde and Mahadeo Narayan Gholve were initially appointed as graduate physical Teachers in Zilla Parishad School at Georai, Dist. Beed. Both these applicants have acquired B.P.Ed. Qualification.

5. On 31.12.1994 the Zilla Parishad, Beed has prepared a common final seniority list of Assistant Teachers in District Technical Services Class II Teachers on the basis of their joining of services. The said list has been approved by Respondent no.2. The applicant Baburao in OA No.892/2011 is at Sr.No.3360 in the said list. The applicant Ramao in OA No.893/2011 stands at Sr.No.3152 in the said list.

6. The Zilla Parishad, Beed has prepared a seniority list of the Assistant Teachers, Technical Services Class III, Head Master Class III, P.T. Teachers, Drawing Teachers, Lab Assistant serving under Zilla Parishad, Beed on the basis of their joining the services as of 1.1.2011. In the said list the name of the applicant Baburao in OA No.892/2011 stands at Sr.No.8, whereas that of applicant Ramrao in OA No.893/2011 stands at Sr.No.2.

7. On 20.10.2011 the Govt. issued a resolution as regards promotions of Class III to the post of Class II Officers along with the list of the Officers. Surprisingly, the

name of the applicants in all Original Applications were not found in the said list, whereas several Officers / Teachers, who are juniors in seniority to the applicants have been included in the said list.

8. According to applicant Baburao in OA No.892/2011 one Namdeo Barikrao Wagh is in the promotion list at Sr.No.48 and his serial number in seniority list is 3384. His date of appointment is 21.12.1983. As against this, applicant Baburao stands at Sr.No.3360 and in the seniority list his date of appointment is shown as 15.12.1983. Thus, undisputedly the applicant is senior to Namdeo, but he was not considered for promotion to the Class II post.

9. According to applicant Ramrao in OA No.893/2011, one Ratan Sawalaram Jaibhai is at Sr.No.126 in the promotional list and his serial number in the seniority list is 3333, and his date of appointment is 5.12.1982. As against this, the applicant stands at Sr. No.3152 in the seniority list and his date of appointment is 14.10.1982

and therefore, undisputedly the applicant Ramrao is senior to Ratan Jaibhai.

10. The applicants in OA Nos.892 & 893 of 2011 have therefore, claimed relief to the effect that, the Respondents no.1 to 3 be directed to promote the applicant in the cadre Maharashtra Educational Services Class II Administrative post of Deputy Education Officer or to any post to which they are entitled.

11. In OA No.894/2011 the applicants have stated that, in the promotional list for the post of Class II administrative post of Deputy Educational Officer all the candidates shown to be promoted, are having qualification of B.Ed. It is stated that, the applicants have completed their B.P.Ed., which is equivalent to B.Ed. And therefore, the applicants should have been considered for promotion in the said list and therefore, it is claimed that, the Circular dated 20.10.2011 and the list of promoted candidates having qualification of B.Ed. only, be quashed and set aside.

12. In all these Original Applications the reply affidavit has been filed by the Respondents no.1 to 3. The sum and substance of the defence taken by the Respondents is that, as per recruitment rules for the post of Maharashtra Education Services Class II (Administrative Branch) the candidate to be promoted must be suitably trained graduate and on the basis of seniority subject to fitness from Officers in the Maharashtra Education Services Class III (Administrative Branch) or in the District Technical Services Class III (Education), the candidates are promoted. The candidate to be promoted must possess B.Ed. Degree in at least second class or an equivalent qualification. It is further stated that, B.P.Ed. is not considered equivalent with B.Ed. for promotion and since the applicants were B.P.Ed. Graduate were not eligible for promotion.

13. The applicants have relied on the judgment delivered by the Maharashtra Administrative Tribunal, Mumbai on 7.5.2012 in OA Nos.953 & 606 of 2011. In the said judgment the Govt. Resolution dated 14.5.1987 was

interpreted and it was held that, the degree of B.P.Ed. is equivalent to B.Ed. for all purposes.

14. In view of the aforesaid judgment referred by the applicants, the respondents no.1 & 3 have filed additional affidavit and submitted that, the G.R. referred in the said judgment i.e. dated 14.5.1987 is not applicable for recruitment of Maharashtra Educational Services Class II (Administrative Branch) recruitment Rules, as the same cadre has been framed as per notification dated 10.5.1995.

15. According to respondents, the Govt. has filed recruitment rules (M.E.S., Class II) (Administrative Branch), and thus rules are called as “the Maharashtra Educational Services, Class II (Administrative Branch), Rules 1974”. The relevant recruitment rules for the purposes of these original applications are reproduced in additional affidavit filed on behalf of Respondents no.1 & 3 are as under :-

“-----1)These Rules may be called the Maharashtra Educational Services. Class II (Administrative Branch) Recruitment rules as 1974.

2) Appointment to the post in the Maharashtra Educational Services, Class II (Administrative Branch) shall be made either

A) By promotion of suitable trained graduate on basis of seniority subject to fitness from among the Officer in Maharashtra Educational Services Class III (Administrative Branch) or in the District Technical Services Class III (Educational) having not less than 5 years services in the respective cadre or.

B) by nomination from among of the candidates who

1) unless already in the services of Government Maharashtra be not more than 35 years of age.

Provided that the age limit may be relaxed in favour of candidates with exceptional qualification or experience or both and

2) Possess (a) a Bachelor's Degree in at least the IInd class or masters degrees of recognized university provided further that preference may be given to candidate possessing a Masters Degree or a Bachelor's Degree in any subject (at the compulsory English) prescribed for the study for the secondary Education course or Higher Secondary Education by the Maharashtra State Board of secondary and higher secondary, Pune.

b) B.Ed. Degree in at least the IInd class or an equivalent qualification of M.Ed. Degree.

c) Experience of teaching educational administration and inspection for not less than 5 years, out of which experience should be of teaching after obtaining the B.Ed.”

16. We have heard Advocates Shri AS Deshmukh and Smt. SR Bhilegaonkar holding for Shri MS Deshpande, learned Advocate for the applicants in respective matters and Shri S.K. Shirse, learned Presenting Officer for the Respondents no.1 & 2. We have also gone through the various affidavits, affidavit in reply, additional affidavits and various documents placed on record.

17. Admittedly all the applicants belongs to Class III cadre of Teachers and they are claiming promotion to the cadre of Class II administrative post of Maharashtra Educational Services, such as Deputy Education Officer or any other equivalent post. It is not disputed that, all the applicants are holding B.P.Ed. Degree. There seems to be no dispute of the fact that, some of the juniors of the applicants have been promoted to the post of Class II administrative post, as per the impugned notification.

However, all the Officers promoted possessed B.Ed. Degree, whereas all the applicants possess B.P.Ed. Degree. The applicants have been denied promotion only on the ground that, they do not possess B.Ed. Degree, which is the only required qualification as stated by the respondents.

18. In view of the aforesaid statement of facts the material points to be considered in this case are as under:-

- i) “Whether the applicants possess requisite qualification for being promoted to the Class II administrative post of Dy. Education Officer or equivalent post?”
- ii) Whether B.Ed. degree is only required? or
- iii) Whether B.P.Ed. Degree can be equated with B.Ed.?”

19. The Respondents have placed on record the Maharashtra Educational Services Class II (Administrative Branch) Recruitment Rules, 1974. These rules shall hereinafter be referred to as “Rules”. The Rules provide eligibility to the promotional post of Class II Administrative Branch through two sources i.e. either by promotion of suitable trained graduate on the basis of seniority subject

to fitness from amongst the Officers in Maharashtra Educational Services Class III (Administrative Branch) or in the District Technical Services Class III (Educational) having not less than five years service in the respective cadre or by nomination from amongst the candidates provided the candidates are within age limit and possess requisite qualification as mentioned in the said Rules. For the purposes of convenience and better understanding the relevant Rules are reproduced herein below :-

“RULES:-

1. These Rules may be called the Maharashtra Educational Service, Class II (Administrative Branch) Recruitment Rules, 1974.

2. Appointment to the post in the Maharashtra Educational Service, Class II (Administrative Branch) shall be made either-

(A) By promotion of a suitable trained graduate on the basis of seniority subject to fitness from among the Officers in Maharashtra Educational Service Class III (Administrative Branch) or in the District Technical Service Class III (Educational) having not less than 5 years service in the respective cadres, or

(B) by nomination from amongst the candidates who

i) unless already in the service of Government of Maharashtra be not more than 35 years of age.

Provided that the age limit may be relaxed in favour of candidates with exceptional qualification or experience or both and

ii) Possess a) a Bachelor's degree in at least the IInd Class or Master's Degree or a recognized University, provided further that, preference may be given to candidates possessing a Master's degree or a Bachelor's degree in any subject of compulsory English prescribed for the study for the secondary education course or higher secondary education by the Maharashtra State Board of Secondary and Higher Secondary Education Pune

b) B.Ed Degree in at least the II nd Class or an equivalent qualification or M.Ed. Degree

c) Experience of teaching educational administration and inspection for not less than 5 years, out of which at least experience should be of teaching after obtaining the B.Ed. And

d) possess adequate knowledge of Marathi. -”

20. The aforesaid rule "B" (ii) (b) says that, the candidate to be promoted must possess B.Ed. Degree in at least second class or equivalent qualification or M.Ed. Degree. Thus, it will have to be seen as to whether B.P.Ed. Degree at least in Class II can be said to be equivalent to B.Ed. Degree.

21. The learned Advocate for the applicants has invited our attention to one G.R. dated 4.7.1973 issued by the Govt. of Maharashtra. The said G.R. is at paper book page nos.243 & 244 in OA No.892/2011. It is necessary to reproduce the said G.R. to avoid any further discussion on the issue and the said G.R. is as under :-

"RESOLUTION :-

According to one of the recommendations of the Physical Education Committees (1968-69) appointed by government under the chairmanship of Dr. P.M. Joseph, the University Authorities in this State were requested by government to start a full fledged bifocal physical education teachers trained in the method of physical education and one academic subject. Accordingly, the Marathwada University and the Bombay University started respectively B.P.Ed (Bachelor of physical education) and B.Ed. course with effect from 1972-73. As those courses are

academically on par with B.Ed. Courses in all respects, government is pleased to direct that the graduates with a degree of Bachelor in physical education (B.P.Ed.) of the Marathwada University or the graduates with a degree of bachelor of education i.e. B.Ed. Of the Bombay University should be treated as trained graduates on par with other B.Ed. Teachers for purposes of status, pay scale, promotions etc and should be treated as qualified physical education teachers for service in secondary schools or as qualified directors of physical education in colleges and Universities.

2) The director of sports and youth services Maharashtra State, Poona should be requested to forward copies of these orders to all recognized secondary schools and colleges not legible and colleges in the state.

3) This resolution issues in consultation with the general administration department and education department with the concurrence of finance department vide its unofficial reference number 1200/F-7/73 dated 26th June 1973.”

22. The plain reading of the aforesaid G.R. therefore, makes it crystal clear that the course of B.P.Ed. (Bachelor of Physical Education) and B.Ed. (Bachelor of Education) course are academically on par with B.Ed. Courses in all respects. In view of this G.R. and also in view of the fact that a candidate to be promoted in the cadre of

Maharashtra Educational Services Class II, Administrative post of Deputy Education Officer or equivalent post may possess B.Ed. Degree or B.P.Ed. degree, since B.P.Ed. Degree is equated in all respects with B.Ed. degree.

23. The learned Advocate for the applicants has invited our attention to the judgment passed by this Tribunal in OA Nos.958 & 606/2011 on 7.5.2012. The copy of the said judgment is placed on record at paper book page no.276 in OA No.892/2011. Though the said judgment interprets the G.R. dated 14.5.1987 and in the said judgment it was held that, the B.P.Ed. Is equivalent to B.Ed. Degree for all purposes, the said G.R. has been issued by Education and Employment Department and the said G.R. makes it clear that, the same is to be treated as equivalent for the purposes of pay, seniority and conditions of service etc. of the Teachers. The Tribunal was please to allow the applicants in the said O.A., who were possessing B.P.Ed. Degree, for interview for the post of Education Officer.

24. As already stated in these matters, the applicants have placed on record the G.R. dated 4.7.1973 (Annexure-F

in OA No.892/11), whereby the Govt. has clearly stated that, B.P.Ed. Degree is equivalent to B.Ed. Degree for all purposes. Considering this aspect it was incumbent upon the respondents to consider and include the name of Teachers, who were otherwise eligible for being promoted in the cadre of Maharashtra Educational Services Class II Administrative posts of Dy. Education Officer or the equivalent posts as stated in the notification dated 20.10.2011. Since the applicants have been denied such inclusion of their names in the list of promoted Teachers from Class III cadre to Class II Administrative post along with letter dated 20.10.2011, such non inclusion of the applicants is illegal.

25. The applicants in OA No.894/2011 have also claimed that the Circular dated 20.10.2011 and list of promotees candidates issued by the Respondent authorities giving promotion to only B.Ed. candidates may be quashed and set aside. It is material to note that, this list has been published long back i.e. on 20.10.2011, and the list includes as many as 180 candidates, who are B.Ed. This

list must have been implemented up till now and therefore, it will be injustice on those candidates, who are already promoted as per said list, if the entire list is quashed and set aside. It is not disputed that, the candidates who are already promoted as per said list were also eligible and therefore, the relief claimed to the effect that, the said list shall be quashed and set aside can not be accepted. However, the respondent authorities can be directed to include the name of the applicants or those Teachers, who possess B.P.Ed. Qualification or equivalent qualification to B.Ed. in the said list, if they are otherwise eligible for promotion. If some junior to applicants is promoted merely because he posses B.Ed. Qualification, the applicants or the candidates who possesses equivalent qualification to B.Ed. including applicants, may claim deemed date of seniority. In view thereof, we pass the following order.

ORDER

- i) All the Original Applications are partly allowed.
- ii) The Respondents no.1 to 3 are directed to consider that the degree of B.P.Ed. is equivalent to B.Ed. for all purposes for recruitment rules of promotion in the cadre of

Maharashtra Educational Services Class II (Administrative Branch) in Education Department.

iii) The Respondents are also directed to consider the applicants' cases for being promoted to the Class II Administrative post and place their cases before the D.P.C. for being considered for promotions in the cadre of Maharashtra Educational Services Class II, Administrative post of Deputy Education Officer or to any other eligible post. If in the D.P.C. the Committee otherwise finds the applicants fit for promotion they be promoted and in case it is found that the Officers junior to applicants have been promoted only because they were possessing B.Ed. qualification, the applicants be given deemed date of promotion from the date of promotion of their junior.

iv) No order as to costs.

MEMBER (J)
atpoa892-893-894-11dbak

VICE CHAIRMAN (A)

